

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

URGENT JOINT MOTION REGARDING DEPOSITION OF STEPHEN SPENCER

To The Honorable United States District Judge Laura Taylor Swain:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as sole Title III representative of debtors the Commonwealth of Puerto Rico (the “Commonwealth”), the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), and the Puerto Rico Public Buildings Authority (“PBA,” and collectively with the Commonwealth and ERS, the “Debtors”) pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² AmeriNational Community Services, LLC (the “Servicer”), as servicer for the GDB Debt Recovery Authority (the “DRA”),

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

and Cantor-Katz Collateral Monitor LLC, which serves as the collateral monitor for Wilmington Trust, N.A. in connection with the bonds issued by the DRA³ (the “Collateral Monitor,” and together with the Servicer, collectively, the “DRA Parties,” and jointly with the Oversight Board, the “Parties”), by and through the undersigned legal counsel, respectfully jointly submit this urgent motion (the “Motion”) requesting entry of an order granting leave for the Oversight Board to depose Stephen Spencer on November 2, 2021, following the close of discovery as set forth in the *Amended Order Establishing Procedures and Deadlines Concerning Objections to Confirmation and Discovery in Connection Therewith* [ECF No. 18394] (the “Amended Confirmation Procedures Order”).

JURISDICTION AND VENUE

1. The United States District Court for the District of Puerto Rico (the “Court”) has subject matter jurisdiction over this matter pursuant to section 306(a) of PROMESA. Venue is proper pursuant to PROMESA § 307(a).

2. The statutory basis for the relief requested herein is Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9018, made applicable to these proceedings by PROMESA §§ 301(a) and 310, and Local Rule 9018-1 of the Local Bankruptcy Rules for the District of Puerto Rico (the “Local Rules”).

BACKGROUND

3. On August 2, 2021, the Court entered its *Order Establishing Procedures and Deadlines Concerning Objection to Confirmation and Discovery in Connection Therewith* [ECF

³ The DRA bonds were issued pursuant to the *Government Development Bank for Puerto Rico Debt Restructuring Act*, Act No. 109-2017, as amended by Act No. 147-2018.

No. 17640] (the “Confirmation Procedures Order”),⁴ which provides for, among other things, discovery and depositions related to the *Seventh Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* [ECF No. 17627] (as may be amended, modified, or supplemented, the “Plan”). As set forth in the Amended Confirmation Procedures Order, the discovery period for confirmation proceedings closed on October 18, 2021. *See* Amended Confirmation Procedures Order ¶ 3.

4. On October 22, 2021, the DRA Parties designated Mr. Spencer as a witness in *The DRA Parties’ Confirmation Hearing Witness List, Exhibit List and Deposition Designations* [ECF No. 18675]. Mr. Spencer was not designated as a witness on the DRA Parties’ preliminary fact witness list. *See The DRA Parties’ Preliminary Fact Witness List* [ECF No. 18043].

5. On October 25, 2021, the DRA Parties filed *The DRA Parties’ Motion Submitting Witness Declarations* [ECF No. 18723] (the “DRA Parties’ Motion”). Mr. Spencer’s declaration (the “Spencer Declaration”) was appended as Exhibit A to the DRA Parties’ Motion.

6. On October 26, 2021, the Oversight Board served a notice and subpoena to depose Mr. Spencer on November 2, 2021 at 9:30 a.m. Atlantic Standard Time (the “Deposition Notice”). On October 27, 2021, the DRA Parties stated that they would agree to accept service of the subpoena provided that (1) Mr. Spencer’s deposition were to start at 10:00 a.m. Atlantic Standard Time on November 2, 2021, and (2) responses, objections, and any documents responsive to the Oversight Board’s subpoena to Mr. Spencer for the production of documents related to his declaration and forthcoming testimony (the “Subpoena”), which the Oversight Board served

⁴ The Confirmation Procedures Order was subsequently amended on October 5, 2021. *See* Amended Confirmation Procedures Order.

contemporaneously with the Deposition Notice, would be due on October 29, 2021 at 5:00 p.m. Atlantic Standard Time. The Oversight Board agreed.⁵

RELIEF REQUESTED

7. The Parties respectfully request that the Court enter an order, as set forth in the attached **Exhibit A**, authorizing the Oversight Board to take a deposition of Mr. Spencer on November 2, 2021, following the close of discovery on October 18, 2021, as set forth in the Amended Confirmation Procedures Order.

BASIS FOR RELIEF REQUESTED

8. The DRA Parties did not designate Mr. Spencer as a witness until October 22, 2021, after the close of discovery on October 18, 2021.

9. Paragraph 4 of the Amended Confirmation Procedures Order states that a “party amending [their previously filed witness] list [must] provide[] an opportunity for any new witness to be deposed prior to the start of the Confirmation Hearing.”

10. Pursuant to Paragraph 4, the Oversight Board seeks to depose Mr. Spencer in connection with the Spencer Declaration.

11. In view of the other confirmation-related deadlines occurring the week of October 25, 2021, and in order to allow sufficient time to review the Spencer Declaration, the Oversight Board noticed Mr. Spencer’s deposition for November 2, 2021.

⁵ The Oversight Board reserves its right to seek to preclude Mr. Spencer’s testimony from the Confirmation Hearing should the DRA Parties fail to produce documents responsive to the Subpoena such that the Oversight Board is unable to adequately prepare for Mr. Spencer’s deposition.

CERTIFICATOIN

12. Pursuant to Local Rule 9013-1 and paragraph I.H of the *Fifteenth Amended Case Management Procedures* [ECF No. 17127-1], the Parties certify that they: (a) have carefully examined the matter and have concluded that there is a true need for urgent relief; (b) have not created the urgency through lack of due diligence on their part; (c) made a bona fide effort to resolve the matter without seeking leave of Court; (d) made reasonable, good-faith communications in an attempt to resolve or narrow the issues being brought to the Court; and (e) consent to the relief sought herein.

13. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Parties respectfully request that this Motion be GRANTED, and that the Court issue an order substantially in the form attached hereto as **Exhibit A**, authorizing the Oversight Board to depose Mr. Spencer on November 2, 2021, in connection with the Deposition Notice served on the DRA Parties pursuant to Rule 30 of the Federal Rules of Civil Procedure, and granting such relief as the Court deems just and proper under the circumstances.

Dated: October 30, 2021
San Juan, Puerto Rico

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***Attorneys for Cantor-Katz Collateral
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GDB Debt Recovery Authority***

CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participants in this case.

/s/ Hermann D. Bauer
Hermann D. Bauer

Exhibit A

Proposed Order

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

ORDER GRANTING URGENT JOINT MOTION REGARDING DEPOSITION OF
STEPHEN SPENCER

Upon consideration of the *Urgent Joint Motion Regarding Deposition of Stephen Spencer*, dated October 29, 2021 (the “Motion”),² filed by the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as sole Title III representative of debtors the Commonwealth of Puerto Rico (the “Commonwealth”), the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), and the Puerto Rico Public Buildings Authority (“PBA,” and collectively with the Commonwealth and ERS, the “Debtors”) pursuant to

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”)³, AmeriNational Community Services, LLC (the “Servicer”), as servicer for the GDB Debt Recovery Authority (the “DRA”), and Cantor-Katz Collateral Monitor LLC, which serves as the collateral monitor for Wilmington Trust, N.A. in connection with the new bonds issued by the DRA⁴ (the “Collateral Monitor,” and together with the Servicer, collectively, the “DRA Parties”); and the Court having jurisdiction over this matter under 28 U.S.C. § 1331, and under section 306(a)-(b) of PROMESA, 48 U.S.C. § 2166(a)-(b); and venue being proper under section 307(a) of PROMESA, 48 U.S.C. § 2167(a); and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that the Motion is GRANTED;

ORDERED that the Oversight Board shall be authorized to depose Mr. Spencer in connection with the Deposition Notice on November 2, 2021;

ORDERED that this Court shall retain jurisdiction with respect to all matters relating to the interpretation and implementation of this Order.

SO ORDERED.

Dated: _____, 2021

Honorable Laura Taylor Swain
United States District Court Judge

³ PROMESA is codified at 48 U.S.C. §§ 2101-2241.

⁴ The DRA bonds were issued pursuant to the *Government Development Bank for Puerto Rico Debt Restructuring Act*, Act No. 109-2017, as amended by Act No. 147-2018.